IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1968 OF 2005

M/s.Dinesh Services. ...Petitioner.
Vs.
Employees' Provident Funds Organisation
SRO Nasik & Ors. ...Respondents.

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Mr. Tejas Dande for the Petitioner.
Mr. Suresh Kumar for Respondent Nos.1 and 2.
Mr. Y. D. Mulani, AGP for Respondent No.3.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

August 9, 2005.

P.C.:

The Petitioner deals in "Labour and Security supplies" in the District of Nasik and has been assigned Code No.MH/517776 under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Proceedings were initiated under Section 7A for the recovery of dues towards Provident Fund for the period between April 2001 and February 2004. An order was passed *ex-parte* on 7th April 2004 calling upon the Petitioner to deposit an amount of Rs.3,81,324/-. The Assistant Provident Fund

Commissioner noted that the summons had been served on the Petitioner on 25th November 2003 and that the Petitioner had failed to appear at the enquiry on the adjourned date of hearing. Upon receipt of the order, the Petitioner filed an application for review under Section 7B on the ground that the Petitioner was hospitalised between 4th December 2003 and 2nd January 2004. The application for review was dismissed by an order dated 13th May 2004. The order of the Assistant Provident Fund Commissioner merely notes that the reasons mentioned in the application for review for not attending the enquiry under Section 7A are not justified.

2. On behalf of the Petitioner, it has been urged that the Assistant Provident Fund Commissioner has failed to consider the medical certificates upon which reliance has been placed. It has also been urged that some part of the dues have been deposited by the Petitioner. In these circumstances, it has been submitted that the Petitioner should not be deprived of an opportunity of defending the enquiry under Section 7A on merits, particularly in

view of the fact that the Petitioner has paid at least some part of the demand made. In our view, having heard Counsel appearing on behalf of the Petitioner and the First and Second Respondents, it would be appropriate to allow the Petitioner an opportunity of contesting the proceedings under Section 7A and in order to facilitate the passing of a fresh order, to quash and set aside the impugned orders that have been passed under Section 7A and Section 7B of the Act. At the same time, some condition of deposit must, in our view, be imposed upon the Petitioner in the interests of justice. Counsel appearing on behalf of the Petitioner has agreed that the Petitioner shall, within a period of eight weeks from today, deposit an amount of Rs.1 lakh with the Second Respondent. Conditional on the aforesaid deposit being made, the impugned orders passed under Section 7A and Section 7B respectively, on 7th April 2004 and 13th May 2004 shall stand quashed and set aside. In that event, the Second Respondent shall pass a fresh order in the proceedings under Section 7A, after furnishing to the Petitioner, a reasonable opportunity of being heard. The deposit that is made by the Petitioner shall abide by

the final order that may be passed by the Second Respondent. In the event that the Petitioner fails to deposit the amount as directed within the period stipulated, the impugned orders passed under Sections 7A and 7B shall stand and the petition shall stand dismissed without further reference to the Court. The Petition is accordingly disposed of in these terms. There shall be no order as to costs.

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